



BILLING CODE: 7510-13

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1852

RIN 2700-AE14

Denied Access to NASA Facilities

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is proposing to amend the NASA FAR Supplement (NFS) to delete the observance of legal holidays clause with its alternates and replace it with a new clause that prescribes conditions and procedures pertaining to the closure of NASA facilities.

DATES: Interested parties should submit comments to NASA at the address below on or before [insert 60 days after publication in the FEDERAL REGISTER] to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700-AE14 via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Andrew O'Rourke (Room 5L32), NASA Headquarters, Office of Procurement, Contract and Grant Policy Division, Washington, DC 20546. Comments may also be submitted to Andrew O'Rourke via email at andrew.orourke@NASA.gov.

FOR FURTHER INFORMATION CONTACT: Andrew O'Rourke, NASA Office of Procurement, Contract and Grant Policy Division, 202-358-4560, email: andrew.orourke@nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

NASA FAR Supplement (NFS) clause 1852.242-72, Observance of Legal Holidays, is included in Agency contracts where contractor performance is to be performed on a NASA facility. It was intended to identify dates that Government employees would not be available and provide notification to contractors of those dates considering that the absence of Government employees might impact contractor performance or contractor access to NASA facilities. Further, the same clause has two alternates, the first addresses contractors who are denied access to NASA workspaces within a NASA facility and the second addresses other instances, such as weather and safety emergencies, which could result in contractors being denied access to the entire NASA facility. Recent events, especially the Government shut-down during October 2013, have revealed a need for NASA to be more specific and to differentiate between these two conditions when contractor employees may be denied access to NASA workspaces or the entire NASA facility. The fact that Government employees may not be at a NASA facility is not an automatic reason for contractor personnel not to be required to be present at their required NASA workspace on a NASA facility. Unless a contractor is denied access to the NASA facility, contractors are expected to perform in accordance with their contractual requirements. This proposed NFS change provides clarity and information beneficial to NASA contractors that are denied access to a NASA facility when a NASA facility is closed to all personnel. Specifically, the change would delete the prescription at NFS 1842.7001, Observance of Legal Holidays, in its entirety, and clause 1852.242-72, Observance of Legal Holidays, with alternates, and replace it with the prescription at NFS 1842.7001 Denied Access to NASA Facilities and clause 1852.242-72, Denied Access to NASA Facilities. The clause would be included in solicitations and contracts where contractor personnel would be required to work onsite at a NASA facility.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

NASA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This proposed rule attempts to provide clarity and information beneficial to NASA contractors that are denied access to a NASA facility when a NASA facility is closed.

This proposed rule imposes no new reporting requirements. This proposed rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that would meet the objectives of this proposed rule. NASA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities. NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610.

Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (RIN number 2700-AE14) in correspondence.

D. Paperwork Reduction Act

The proposed rule contains no information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR 1842 and 1852.

Government procurement.

Cynthia D. Boots

Alternate Federal Register Liaison

Accordingly, 48 CFR parts 1842 and 1852 are proposed to be amended as follows:

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for part 1842 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1842.70 [Revised]

2. Subpart 1842.70 is revised to read as follows:

Subpart 1842.70--Additional NASA Contract Clauses.

1842.7001 Denied Access to NASA Facilities.

(a) The contracting officer shall insert the clause at 1852.242-72, Denied Access to NASA Facilities, in solicitations and contracts where contractor personnel will be working onsite at a NASA facility such as: NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Centers. For a list of NASA facilities see NPD 1000.3 “The NASA Organization”. The contracting officer shall not insert the clause where contractor personnel will be working onsite at the Jet Propulsion Laboratory including the Deep Space Network Communication Facilities (Goldstone, CA; Canberra, Australia; and Madrid, Spain).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

1852.242-72 [Revised]

4. Section 1852.242-72 is revised to read as follows:

1852.242-72 Denied Access to NASA Facilities.

As prescribed in 1842.7001(a), insert the following clause:

DENIED ACCESS TO NASA FACILITIES

(XX/XXXX)

(a)(1) The performance of this contract requires contractor employees of the prime contractor or any subcontractor, affiliate, partner, joint venture, or team member with which the contractor is associated, including consultants engaged by any of these entities, to have access to, physical entry into, and to the extent authorized, mobility within, a NASA facility.

(2) NASA may close and or deny contractor access to a NASA facility for a portion of a business day or longer due to any one of the following events –

- (i) Federal public holidays for federal employees in accordance with 5 U.S.C. 6103;
- (ii) Fires, floods, earthquakes, unusually severe weather to include snow storms, tornadoes and hurricanes;
- (iii) Occupational safety or health hazards;
- (iv) Non- appropriation of funds by Congress; or
- (v) Any other reason.

(3) In such events, the contractor employees may be denied access to a NASA facility, in part or in whole, to perform work required by the contract. Contractor personnel already present at a NASA facility during such events may be required to leave the facility.

(b) In all instances where contractor employees are denied access or required to vacate a NASA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the contracting officer will provide direction to the contractor, which could include continuing on-site performance during the NASA facility closure period. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts by, for example, performing required work off-site if possible or reassigning personnel to other

activities if appropriate.

(c) The contractor shall be responsible for monitoring the local radio, television stations, NASA websites, other communications channels, for example contracting officer notification, that the NASA facility is accessible. Once accessible the contractor shall resume contract performance as required by the contract.

(d) For the period that NASA facilities were not accessible to contractor employees, the contracting officer may –

(1) Adjust the contract performance or delivery schedule for a period equivalent to the period the NASA facility was not accessible;

(2) Forego the work;

(3) Reschedule the work by mutual agreement of the parties; or

(4) Consider properly documented requests for equitable adjustment, claim, or any other remedy pursuant to the terms and conditions of the contract.

(e) Notification procedures of a NASA facility closure, including contractor denial of access, as follows -

(1) The contractor shall be responsible for monitoring the local radio, television stations, NASA websites, and other communications channels (for example, contracting officer notification) for announcement of a NASA facility closure to include denial of access to the NASA facility. The contractor shall be responsible for notification of its employees of the NASA facility closure to include denial of access to the NASA facility. The dismissal of NASA employees in accordance with statute and regulations providing for such dismissals shall not, in itself, equate to a NASA facility closure in which contractor employees are denied access. Moreover, the leave status of NASA employees shall not be conveyed or imputed to contractor personnel. Accordingly, unless a NASA facility is closed and the contractor is denied access to the facility, the contractor shall continue performance in accordance with the contract.

(2) NASA's Emergency Notification System (ENS). ENS is a NASA-wide Emergency Notification and Accountability System that provides NASA the ability to send messages, both Agency-related and/or Center-related, in the event of an emergency or emerging situation at a NASA facility. Notification is provided via multiple communication devices, e.g. E-mail, text, cellular, home/office numbers. The ENS provides the capability to respond to notifications and provide the safety status. Contractor employees may register for these notifications at the ENS website: <http://www.hq.nasa.gov/office/ops/nasaonly/ENSinformation.html>.

(End of clause)

[FR Doc. 2015-10944 Filed: 5/12/2015 08:45 am; Publication Date: 5/13/2015]